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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 201008-0267]

RIN 0648-BJ84

Pacific Island Fisheries; 2020-2023 Hawaii Kona Crab Annual Catch Limit and Accountability Measure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish annual catch limits (ACLs) of 30,802 pound (lb) and annual catch targets (ACTs) of 25,491 lb of main Hawaiian Islands (MHI) Kona crab in 2020, 2021, 2022, and 2023. The proposed rule would also establish in-season and post-season accountability measures (AMs). The proposed action supports the long-term sustainability of the Hawaii Kona crab fishery.

DATES: NMFS must receive comments by *[insert date 21 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0091, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0091>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS prepared a draft environmental assessment (EA) that describes the potential impacts on the human environment that could result from the proposed ACL and AM. The draft EA and other supporting documents are available from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIRO
Sustainable Fisheries, 808-725-5182.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Kona crab fishery in the U.S. Exclusive Economic Zone (generally 3-200 nm from shore) around Hawaii through the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FEP contains a process for the Council and NMFS to specify ACLs, ACTs, and AMs; that process is codified at Title 50, Code of Federal Regulations, § 665.4 (50 CFR 665.4). The regulations require NMFS to specify an ACL and AM for each stock and stock complex of management unit species (MUS) in an FEP, as recommended by the Council, and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action, which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action. The specification of an ACT, which is set below the ACL, can help ensure that the catch does not exceed the ACL. When used, an ACT also serves as the basis for invoking accountability measures.

The Council recommended that NMFS specify ACLs of 30,802 lb and ACTs of 25,491 lb for MHI Kona crab for each of the 2020-2023 fishing years. The fishing year for Kona crab is the calendar year. The Council based its recommendation on a 2018 benchmark stock assessment of MHI Kona crab, published in 2019, and in consideration of the best available scientific, commercial, and other information about the fishery. The stock assessment estimated the overfishing limit for Kona crab to be 33,989 lb. The proposed ACLs and ACTs are associated with a 38 percent and 20 percent risk of overfishing, respectively. These levels are more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson Stevens Act. Catch from State and Federal waters will count toward catch limits. NMFS does not anticipate that the fishery would reach the proposed limit in any fishing year, or that fishing for Hawaii Kona crab would be constrained during the fishing year.

NMFS proposes to implement both in-season and post-season AMs. Under the in-season AM (which is new for this fishery), when NMFS projects that the catch of Kona crab will reach the ACT, we would close the commercial and non-commercial fisheries for Kona crab in Federal waters for

the remainder of the year. For the post-season AM, if NMFS and the Council determine after the end of each fishing year that the catch exceeded the ACL, NMFS would reduce the ACL and ACT in the subsequent fishing year by the amount of the overage. In the event that the catch exceeds the ACT, but is below the ACL, a post-season correction would not be applied. NMFS will use the best scientific information available to monitor the ACT and ACL, such as the monthly catch reporting required by State of Hawaii Commercial Marine License (CML) holders. Since NMFS does not issue Federal fishing permits to fish for Kona crab and instead relies on the CML, we have no way to directly inform fishermen of an in-season closure or post-season adjustment. NMFS will provide advance notice to fishermen and the public through available print and online publications if we implement an in-season closure or a post-season correction. We will also request the State of Hawaii notify CML holders of any changes in the fishery, including an in-season closure or a post-season correction.

The proposed rule would make a housekeeping change related to codification of the Hawaii deepwater shrimp ACL and AMs. Specifically, the proposed rule would separate the ACLs for Kona crab and deepwater shrimp in 50 CFR 665.253 by adding paragraphs for each stock.

NMFS will consider public comments on this proposed rule and will announce the final ACLs, ACTs, and AMs in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date. Regardless of the final ACL, ACT, and AM, all other management measures will continue to apply in the fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

This rule would apply to participants in the commercial and non-commercial fisheries for MHI Kona crab. Kona crab catch averaged 3,316 lb from 2017-2019, with an estimated ex-vessel value of \$24,605, if all catch were sold, based on the 2019 average price of \$7.42 per lb; between 2017 and 2019, percent sold ranged from 43 to 57 percent. The amount of Kona crab caught each year has generally declined since 2011, when 51 fishermen reported landing 10,609 lb, although 2019 Kona crab catch was almost double 2018 catch. During the 2019 fishing year, 23 fishermen reported landing 5,698 lb. In 2018, 22 fishermen reported landing 2,561 lb.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels engaging in the commercial and non-commercial fisheries for Kona crab (NAICS Code: 11411) are small entities. That is, they

are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, homeport, or vessel length.

Even though this proposed action would apply to a substantial, but unquantified, number of vessels, this action should not result in significant adverse economic impact to individual vessels. The proposed ACTs are much higher than the ACL implemented in 2017 and 2019 (3,500 lb). This increase is because the most recent stock assessment incorporated several changes that resulted in markedly different outputs compared to the previous assessment, upon which the previous ACLs were based. The proposed ACLs are not expected to result in an expansion of the fishery by new fishermen looking to take advantage of the higher quota compared to previous years. Given the offshore fishing grounds for Kona crab, it would take a significant financial investment to become active in the fishery if fisherman did not already own a vessel and the required specialized gear. The proposed action, if

implemented, is not expected to constrain the fishery, given that the proposed ACLs and ACTs are both more than double the highest catch recorded over the past 10 years, which was 10,609 lb in 2011. Furthermore, the fishery would still be managed by State of Hawaii regulations (e.g., discarding of female and undersized crabs) that limits interest and viability of the fishery.

While NMFS and the Council are considering, as AMs, both an in-season closure in the Kona crab fishery if catch is projected to reach the ACT and a post-season adjustment if the catch exceeds the ACL, the proposed ACT is several times higher than the reported catch in 2019, so either accountability measure is unlikely to be needed. The ACLs, ACTs, and AMs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during each fishing year.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 665

Annual catch limits, Accountability measures, Fisheries, Fishing, Hawaii, Kona crab, Pacific Islands.

Authority: 16 U.S.C. 1801 et seq.

Dated: October 8, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 – FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.243, add paragraph (d) to read as follows:

§665.243 Prohibitions.

* * * * *

(d) In Crustacean Permit Area 2, it is unlawful for any person to fish for, possess, sell, or offer for sale any Kona crab from a closed fishery in the Federal waters of the MHI in violation of § 665.253(b).

3. Revise § 665.253 to read as follows:

§ 665.253 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) *Deepwater shrimp*. (1) In accordance with § 665.4, the ACLs for each fishing year are as follows:

Table 1 to paragraph (a) (1)

Fishing Year	2020	2021
ACL (1b)	250,733	250,733

(2) If the average catch of the three most recent years of deepwater shrimp exceeds the specified ACL in a

fishing year, the Regional Administrator will reduce the ACL for the subsequent year by the amount of the overage.

(b) *MHI Kona crab*. (1) In accordance with § 665.4, the ACLs and ACTs for each fishing year are as follows:

Table 2 to paragraph (b) (1)

Fishing Year	2020	2021	2022	2023
ACL (1b)	30,802	30,802	30,802	30,802
ACT (1b)	25,491	25,491	25,491	25,491

(2) When the ACT is projected to be reached based on analyses of available information, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify affected fishermen. The document will include an advisement that the fishery will be closed beginning on a specified date, which is not earlier than seven days after the date of filing the closure notification for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the ACL is reached.

(3) On and after the date specified in paragraph (b) (2) of this section, no person may fish for, possess, sell, or offer for sale any Kona crab from a closed fishery in the Federal waters of the MHI, except as otherwise allowed in this section.

(4) If landings exceed the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for the subsequent year by the amount of the overage.

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